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Before the
FEDERAL COMMUNICATION COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) FCC 94-98
Implementation of Section 309 (j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

To: The Commission

PETITION FOR RECONSIDERATION

The Rural Cellular Association ("RCA")¹, by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, respectfully requests reconsideration of the Commission's "Third Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, 59 Fed. Reg. 26,741 (1994) ("Third R&O") which establishes rules and procedures for auctioning licenses for Personal Communications Services in the 900 MHz band ("narrowband PCS").

The narrowband PCS competitive bidding rules adopted by the Commission are inconsistent with the Communications Act of 1934, as amended ("the Act"), and disserve the public interest. By virtue

¹ The RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country covering approximately 6.5 million in population. RCA member companies are affiliated with Local Exchange Carriers (LECs) who operate 50,000 or fewer access lines. RCA member companies are adversely affected by the rules that have been adopted in the above-captioned proceeding.

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of its complete failure to permit rural telephone companies² to receive any bidding preference, the Commission has adopted rules which not only fail to comply with the Congressional directive set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), but virtually ensure that narrowband PCS will not be available to those living in rural America. The award of bidding preferences to rural telephone companies would not only be consistent with Section 309 of the Act, it would serve the public interest by increasing the prospect that narrowband PCS will be licensed to an entity that will provide the service to rural areas.

The Budget Act directs the FCC to ensure that licenses for new technologies be awarded in a manner that promotes "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays." (emphasis added). In order to carry out this mandate and ensure the provision of narrowband PCS to rural America, the Commission must

² In Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, 59 Fed. Reg. 22,980 (1994) ("Second R&O") the Commission adopted Rule Section 1.2110(b)(3) which provides, in pertinent part, that: "a rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants." 47 C.F.R. 1.2110(b)(3) (emphasis added). This definition of "rural telephone company" inexplicably excluded many small independent telephone companies that serve rural areas. On June 3, 1994, the RCA filed a petition for reconsideration seeking modification of the definition of "rural telephone company" to include independently owned and operated local exchange carriers that either operate 50,000 or fewer access lines or serve communities of 10,000 or fewer in population.

ensure that bidding preferences are given to rural telephone companies. RCA urges the Commission to modify its rules to include rural telephone companies in the group eligible for bidding preferences.

I. BACKGROUND

Historically, rural telephone companies have been the only providers of telecommunications services in rural areas. Larger companies chose not to provide telephone service to these less economically desirable areas. The commitment these telephone companies have made to provide their subscribers with new telecommunications services is readily demonstrated by their quick roll-out of cellular services in the rural markets and the recent construction of radio-based wireless cable systems to provide video services to rural America.

The FCC and Congress have also recognized the commitment of rural telephone companies to serve the needs of rural subscribers and have afforded rural telephone companies appropriate treatment in recognition of this commitment. In 1984, Congress created a "rural exemption" to its telephone cable cross-ownership prohibition in order to ensure that cable service was made available to rural America.³ More recently, Congress specifically mandated that the Commission award licenses for new technologies in a manner that promotes the following objectives:

³ 47 U. S. C. § 533 (b)(3) (1993).

1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and

2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Budget Act, Section 309(j)(3). As discussed below, the Commission's Third R&O failed to adopt procedures that would give rural telephone companies a meaningful opportunity to participate in the auction process and thereby improve the likelihood that narrowband PCS will be available in rural America.

II. DISCUSSION

In the Third R&O, the Commission states: "we adopt specific preferences for narrowband PCS designed to ensure that designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of narrowband PCS services." (para. 68). The FCC then proceeded to adopt preferences only for minorities, women and small businesses. These preferences provide that:

(1) Businesses owned by women and minorities will be entitled to a 25 percent bidding credit applicable to three specified nationwide licenses (one 50/50 kHz paired, one 50/12.5 kHz paired, and one 50 kHz unpaired) ten specified regional licenses (one 50/50 kHz paired and one 50/12.5 kHz paired license in each region); and 153 specified MTA licenses (one 50/50 kHz paired, one 50/12.5 kHz paired, and one 50 kHz unpaired license in each MTA).

(2) Tax certificates will be issued to initial investors in minority and female-owned enterprises upon divestiture

of their interests, and to licensees who transfer their authorizations to minority and female-owned businesses.

(3) Installment payments will be made available to small businesses for any BTA, MTA or regional narrowband licenses.

Third R&Q para. 68. No preferences were awarded to rural telephone companies.

The Commission expressly decided not to provide bidding credits or other separate preferences to rural telephone companies bidding on narrowband PCS spectrum concluding that:

...given the relatively modest build-out costs, such preferences are unnecessary to ensure the participation of rural telephone companies in the provision of this service to rural areas. Moreover, in view of the fact that rural telephone companies may use their existing infrastructure to provide integrated narrowband PCS services in their rural areas, should they choose to do so, we believe they will have ample opportunity to participate in narrowband PCS.

Third R&Q para. 71.

There is utterly no logic to this statement. Build-out costs and existing infrastructure have absolutely nothing to do with whether an entity is successful in obtaining a narrowband PCS license. Congress has recognized that in a spectrum auction environment, the public interest requires that some consideration and preferential treatment be afforded to rural telephone companies in their participation in all auctions for spectrum including narrowband PCS licenses. History has repeatedly proven that if a rural telephone company is not awarded a radio license, the radio service will not be provided to rural areas. The Commission's narrowband PCS build-out benchmark requirements which require narrowband PCS licensees to provide coverage based on either geographic coverage or

population coverage⁴ can be readily met by providing coverage to the most densely populated areas within the service area. Once the build-out requirements are met there is no incentive for the narrowband PCS licensee to provide coverage to sparsely populated rural areas. Unlike the cellular rules, the narrowband PCS rules do not provide that unserved areas revert back to the FCC for licensing to other interested entities. Under the narrowband PCS rules, rural areas of the country could remain unbuilt and forever held captive by a disinterested licensee. Therefore, it becomes increasingly evident that unless rural telephone companies are provided with consideration and preferences in their attempt to acquire the licenses at auction, the service will not be available to rural America.

The Commission's faulty reasoning for excluding rural telephone companies is also incongruous with the rationale set

⁴ Nationwide narrowband PCS licensees are required to either provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the population within five years and provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the population within ten years of initial license grant date. Regional narrowband PCS licensees are required to either provide coverage to a composite area of 150,000 square kilometers or serve 37.5 percent of the population within five years and provide coverage to a composite area of 300,000 square kilometers or serve 75 percent of the population within ten years of initial license grant date. MTA narrowband PCS licensees are required to provide coverage to a composite area of 75,000 square kilometers or 25 percent of the geographic area or serve 37.5 percent of the population within five years and provide coverage to a composite area of 300,000 square kilometers or 50 percent of the geographic area or serve 75 percent of the population within ten years of initial license grant date. BTA narrowband PCS licensees need only construct one base station and begin providing service within the BTA within one year of initial license grant date. See 47 C.F.R. 99.103.

forth in the Third R&O in support of the award of preferences to minorities and women. In paragraph 74 of the Third R&O, the Commission states:

Apart from Congress' directive, we think that ensuring the opportunity for women and minorities to participate in narrowband PCS is important for the telecommunications industry. Companies owned by women and minorities can play a vital role in serving certain geographic areas and other niche markets that may be overlooked by other industry competitors, thus promoting our goal of universal access to telecommunications services. Not only will the industry become more diverse through the adoption of meaningful preferences, but we believe that a much wider customer base will obtain access to innovative technologies. Moreover, studies show that even when minority-owned firms do not locate within urban minority communities, they employ more minorities relative to other companies, thereby promoting our goals of equal employment opportunity, economic growth and community economic development.

Third R&O para. 74 (footnotes omitted).

Therein lies the very support for providing auction preferences for rural telephone companies! Ensuring opportunities for rural telephone companies to participate in narrowband PCS is important for the telecommunications industry because rural telephone companies play a vital role in serving rural areas that are overlooked by other companies, thus promoting the goal of universal access to telecommunications services. Moreover, a much wider customer base will obtain access to innovative technologies. Additionally, by implementing new radio-based services in rural areas, rural telephone companies hire more employees thereby promoting economic growth and community economic development in rural areas. In many rural areas, the rural telephone company is the largest employer.

With respect to the installment payment preference awarded to small businesses, the RCA notes that installment payments are only available to rural telephone companies provided they meet the definition of a "small business."⁵ The Third R&O, however fails to indicate that the Commission gave any consideration to the fact that many rural telephone companies do not meet the Commission's current small business definition because of the significant capital required to operate a small telecommunications company.⁶ This distinction was not overlooked by Congress when it recognized that rural telephone companies should be given distinct consideration in addition to whatever preferences they may receive if they qualify as a small business.

The RCA submits that the Commission's positive experience with the rapid and efficient provision of rural cellular radio service by rural telephone companies attests to the validity of awarding special consideration in the instant proceeding. Entities which qualify as "rural telephone companies" should not be frustrated in their attempt to continue their commitment to bring new technologies to rural America because of erroneous fact finding on the part of the Commission.

The FCC's failure to provide preferences to rural telephone companies not only fails to carry out the statutory mandate, it

⁵ Third R&O para. 71.

⁶ The RCA notes that several parties have filed petitions for reconsideration of the Second R&O requesting reconsideration of the small business definition. See petition for reconsideration filed by U.S. Intelco Networks, Inc. and National Telephone Cooperative Association.

also fails to take into consideration past policy and rules concerning the treatment of rural telephone companies and their fulfillment of the provision of other radio-based service to rural areas. Accordingly, the Commission should modify its rules to ensure that all rural telephone companies are given the opportunity to participate in the provision of narrowband PCS to rural areas.

III. PROPOSAL

In order for the Commission to satisfy its statutory as well as public interest obligations, it must modify its rules to provide for meaningful preferences to rural telephone companies. As discussed above, because the rationale for the award of bidding credits and tax certificates to minorities and women is also applicable to rural telephone companies, rural telephone companies should be given bidding credits and tax certificates. Additionally, since Congress recognized that rural telephone companies should be given distinct consideration in addition to whatever preferences they may receive if they qualify as a small business, rural telephone companies should be provided the opportunity to pay for the license using installment payments regardless of whether the telephone company meets the definition of a "small business."


IV. CONCLUSION

Congress has explicitly defined the public interest as requiring special regard to and accommodation of the needs of rural America. It has recognized the desirability of fostering participation by rural telephone companies in the provision of new radio-based services, including narrowband PCS. The RCA, therefore, respectfully submits that adherence to the Congressional mandate through the modification of the auction rules as proposed herein will serve the public interest.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By: _____


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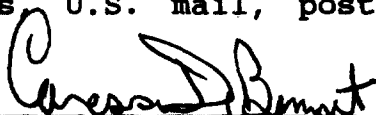
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June 22, 1994

Certificate of Service

I, Caressa D. Bennet, regulatory counsel to the Rural Cellular Association, hereby certify that copies of the foregoing Petition for Reconsideration of the Rural Cellular Association were served on the 22nd day of June, by first class U.S. mail, postage prepaid, to the following:


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